

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

PRIYA VERMA ON BEHALF OF)	13-CV-03034
HERSELF AND ALL OTHERS)	
SIMILARLY SITUATED,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
3001 CASTOR, et al,)	Philadelphia, PA
)	March 15, 2018
Defendants.)	2:43 p.m.

TRANSCRIPT OF PRETRIAL TELEPHONE CONFERENCE
BEFORE THE HONORABLE ANITA B. BRODY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

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1 (The following was heard at 2:53 p.m.)

2 COURTROOM DEPUTY: On the record now, Your Honor.

3 THE COURT: -- since I did ask for it. Tell me what
4 your objection is to the Wage Act.

5 MR. INNELLI: Well, as we set forth in our -- in our
6 motion to dismiss, which we submitted to the Court, EFC Number
7 155, Your Honor -- I don't have it at my fingertips right now,
8 and the motion to dismiss, Count Six, which is the unjust
9 enrichment is that --

10 THE COURT: Are you going to object to my charging
11 -- are you going to object to my charging the Wage Act?

12 MR. INNELLI: Am I going to object to your charges
13 on the Wage Act?

14 THE COURT: No, are you going to object to my
15 present -- allowing the Wage Act to -- are you going to object
16 to the Wage Act as being an issue as you did in your -- in
17 your 12(b) -- inappropriate 12(b)(6)? I said you could take
18 this up at trial. Are you going to object to that --

19 MR. INNELLI: Right.

20 THE COURT: -- to that count at trial?

21 MR. INNELLI: Yes, Your Honor.

22 THE COURT: All right. And do you know the reasons
23 why at this point?

24 MR. INNELLI: They're -- they're stated in my brief.
25 I don't have the brief at my fingertips right now.

1 THE COURT: Okay. All right. And you're going to
2 object to the -- also to the --

3 MR. INNELLI: Wage Collection Act --

4 THE COURT: -- Wage Collection Act?

5 MR. INNELLI: -- Payment and Collection --

6 THE COURT: All right, Mr. Wells, do you want me to
7 discuss these pretrial or do you want me to discuss these
8 after you present your case?

9 MR. WELLS: Your Honor, we can discuss these after
10 we present our case to you.

11 THE COURT: Okay. All right. Okay. All right.
12 And so -- and you'll be prepared, Mr. Innelli, to argue on it.
13 You know, I assume that you'll ask for dismissal of those at
14 -- after the plaintiff's case, is that correct?

15 MR. INNELLI: Yes. Yes, Your Honor.

16 THE COURT: All right. Okay. All right, you be
17 prepared to argue it, okay?

18 MR. WELLS: Yes, Your Honor.

19 THE COURT: Okay. All right. Thank you. Also, as
20 far as the FLSA case and the number that you've reached on the
21 FSLA (sic) case, I assume that we don't have to tell them
22 anything about it and that I will simply subtract whatever
23 you've agreed to from the verdict, if any, in the -- in the
24 wage case.

25 MR. WELLS: Your Honor, per the agreement, it will

1 only go to the interest of the liquidated damages issue which
2 will be raised at the trial so it would not have any affect
3 with respect to the minimum wage damages under Pennsylvania
4 law.

5 THE COURT: Say that again?

6 MR. WELLS: Yes, Your Honor, to state it
7 differently, there will not be any offset for this settlement
8 with respect to the jury verdict as the jury verdict will
9 address the minimum wage counts under State law as well as
10 tip-out claims.

11 The settlement is for the liquidated damages that we
12 talked about at the final pretrial conference which was in
13 Title II under the FLSA but not under State law for that
14 additional percentage and that will be resolved. We've
15 effectively streamlined it so the jury will only have to
16 address the total number of hours worked, the total shifts
17 worked and how much wages and tip-outs are due.

18 THE COURT: Oh, so you --

19 MR. WELLS: So we won't --

20 THE COURT: So you won't have any wages in your --
21 you don't have any wages in your agreement, is that correct?

22 MR. WELLS: Correct, Your Honor, but there will be a
23 dismissal of the FLSA claim --

24 THE COURT: Yes, of course.

25 MR. WELLS: -- but there won't be any -- there won't

1 be any setoff as to the -- the jury verdict for the State
2 claim.

3 THE COURT: Is that correct, Mr. -- Mr. Innelli?

4 MR. INNELLI: Your Honor, this is my understanding
5 and how I -- how I understand it. What I did is take the 22
6 opt-ins of Ms. Verma and with that three years as the Court
7 suggested, added up all the hours they had, multiplied it by
8 \$7.25 per hour and then doubled that.

9 That's liquidated damages from our perspective. I
10 think that's all that the -- the opt-outs are entitled to.
11 That is an issue that is in dispute. I think we argue that
12 after the case in chief as reported by the plaintiff.

13 THE COURT: No, I want to know what you -- I want to
14 know what your agreement is. You told me that, as I
15 understand it, Mr. Lynch (sic) doesn't think that that
16 agreement -- that agreement has anything to do with what's
17 going to happen on Monday, is that correct, Mr. Lynch (sic)?

18 MR. WELLS: Your Honor --

19 THE COURT: Mr. Wells I mean, I'm sorry.

20 MR. WELLS: Yes, yes, Your Honor, it has -- it has
21 no bearing on the trial on Monday.

22 THE COURT: So we don't -- you settled that and
23 that's finished and then I try the case on Monday and there
24 are no setoffs or anything else, is that correct?

25 MR. WELLS: Yes, Your Honor.

1 THE COURT: And is that what you understand, Mr.
2 Innelli?

3 MR. INNELLI: Your Honor, can I hear what you said
4 again? I'm having difficulty hearing.

5 THE COURT: Oh, okay. What I said was that as far
6 as you both have agreed that, as I understand it, that that's
7 your -- your separate agreement is for how much -- how much is
8 it for?

9 MR. WELLS: \$109,000.

10 MR. INNELLI: \$109,000.

11 THE COURT: Okay. And that just stays 109,000? We
12 don't care what happens on Monday, Tuesday or Wednesday of
13 next week in the case in the State Court claim, is that
14 correct?

15 MR. INNELLI: That's correct, Your Honor.

16 MR. WELLS: Yeah.

17 THE COURT: Okay. So I don't have to worry about
18 it. Okay, that's just --

19 MR. INNELLI: And, Your Honor, it is my -- it is my
20 understanding that one can't double-dip, they can't get paid
21 twice and that's why I say that's an issue that will be paid
22 with the Court after the case in chief has been put -- put in.

23 THE COURT: Well, then you'd better decide it --

24 MR. INNELLI: (Inaudible).

25 THE COURT: One second. I think I'm -- you may be

1 putting me in a position of having to try both cases. That
2 sounds to me like there isn't any settlement. I'm sorry, it
3 sounds to me --

4 MR. INNELLI: Well, Your Honor --

5 MR. WELLS: And, Your Honor, if that's the case, I
6 need to know that now because I've focused on the agreement
7 that we've discussed and we have been working and tapering and
8 memorializing. So I agree -- I concur with the Court if
9 plaintiff's counsel thinks there is no agreement, we need to
10 know this now so we can try the entire case.

11 MR. INNELLI: This comes down to a question that has
12 not been raised or addressed before and that is whether a
13 plaintiff or plaintiffs can receive compensation in wages
14 under the FLSA and under the Minimum Wage Act.

15 THE COURT: Well, I think that there's also a
16 question of the liquidated damages, whether they -- they
17 probably shouldn't be deducted. But half of them -- half of
18 it might be deducted. I mean, you get -- you get the whole
19 thing no matter what happens, Mr. Lynch (sic) -- I mean, I'm
20 sorry, Mr. Wells, you get the whole thing. It doesn't matter.
21 It does -- but --

22 MR. INNELLI: But he -- they're -- they're getting
23 the liquidated damages for the FLSA --

24 THE COURT: And that's all it is and so that FLSA,
25 that is all liquidated damages, is that correct, Mr. Wells?

1 It's all liquidated damages, so basically it doesn't affect
2 what's going to happen on Monday if it's all liquidated
3 damages?

4 MR. WELLS: Correct, Your Honor.

5 THE COURT: Oh, okay.

6 MR. WELLS: That's absolutely correct.

7 THE COURT: Is that understood, Mr. --

8 MR. INNELLI: Yes.

9 THE COURT: -- Mr. Innelli, so we don't -- it's all
10 finished. All that is is liquidated damages so now we -- and
11 you're not -- and you're withdrawing the overtime, is that
12 correct, Mr. Wells?

13 MR. WELLS: Yes, Your Honor.

14 THE COURT: All right, so it's only a matter of the
15 minimum wage.

16 MR. WELLS: Minimum wage and the tip-outs, WPCL
17 (inaudible).

18 THE COURT: Okay. All right. Okay. And I'll have
19 the -- and apparently, and I allowed this, that he could raise
20 at trial the issue of the -- of the unjust -- of the Wage Act,
21 okay? One second.

22 MR. WELLS: Yes, Your Honor.

23 (Pause -- the Court discusses issue with law clerk)

24 THE COURT: Minimum wage -- no, the minimum wage --
25 they're getting the -- sure, he's going to get the minimum

1 wage under -- under the Minimum Wage Act of the State.

2 MR. WELLS: Yes, Your Honor, under the Minimum Wage
3 Act.

4 THE COURT: And are you asking -- well, you can't
5 get both.

6 LAW CLERK: No.

7 THE COURT: You can't get under both. You can
8 either get it under the --

9 LAW CLERK: Well --

10 THE COURT: One second. I think -- I'd like one
11 second to discuss this with my law clerk because I may be
12 misunderstanding, okay? Hold the wire.

13 MR. WELLS: Yes, Your Honor.

14 (Off the record)

15 COURTROOM DEPUTY: -- Your Honor.

16 THE COURT: And so I -- Mr. Wells, of course you
17 know -- realize that there is a possibility that I might knock
18 out the -- I wanted to make sure I knew labels of the act, the
19 WPCL. I might decide, I don't know yet, that that is not a
20 legitimate claim. You are asking for minimum wage under the
21 PMW -- Pennsylvania Minimum Wage Act -- PMWA, isn't that
22 correct?

23 MR. WELLS: Yes, Your Honor. We're asking for --
24 we're asking for minimum wage under the Pennsylvania Minimum
25 Wage Act. And then under the WPCL, the Wage Payment

1 Collection Law, our claim is defendant did not pay minimum
2 wage and therefore -- and is required then to pay deductions,
3 the mandatory tip-out. So they are owed reimbursement for the
4 mandatory tip-out and liquidated damages under Pennsylvania
5 law of 25 percent for the minimum wage payments not made.

6 THE COURT: Okay. But you go also -- you also --
7 okay, but you also are going to have -- you still have claims
8 under the PM -- under the Pennsylvania Minimum Wage Act, isn't
9 that correct?

10 MR. WELLS: Yes, we still have a claim under the
11 Pennsylvania Minimum Wage Act and that will be addressed at
12 trial on Monday.

13 THE COURT: Okay.

14 MR. WELLS: The Pennsylvania Minimum Wage Act, the
15 Wage Payment Collection Law and unjust enrichment,
16 notwithstanding defendant's forthcoming motion on Counts 5 and
17 6 which we'll address after our case in chief has been
18 presented.

19 THE COURT: Okay. That sounds to me like we've got
20 it. Mr. Innelli, you understand that, don't you?

21 MR. INNELLI: Either way I calculated the settlement
22 agreement amount and that's what I -- my client is obligated
23 to pay.

24 THE COURT: I don't know what you -- I don't know
25 what that means, but that's under the -- that's under the

1 FLS --

2 MR. INNELLI: (Inaudible).

3 THE COURT: That -- I have no idea what that means,
4 but I understand that you have -- that you stipulated to -- or
5 let's -- I'm not going to say it, it's unfair. Mr. Wells,
6 tell me what you believe you stipulated to under the -- under
7 the Federal law.

8 MR. WELLS: Yes, the two Federal claims of the FLSA
9 minimum wage and the FLSA overtime claims are effective -- are
10 being dismissed pursuant to the settlement. In addition,
11 plaintiff is not proceeding with the overtime claim under
12 State law.

13 THE COURT: No, I want to know only the Federal
14 claims now.

15 MR. WELLS: Okay, I'm sorry. Then under the Federal
16 law we -- the Federal claims are settled and -- and dismissed.

17 THE COURT: Yes, but what are you settling? What is
18 that number of 109,000? That is just one part of the minimum
19 wage -- that's not the minimum wage, that is liquidated
20 damages, isn't that correct?

21 MR. WELLS: Yes. Yes, Your Honor, I'm sorry, I
22 apologize. Yes. We are settling the liquidated damages.

23 THE COURT: All right. And that's what you've
24 agreed to, Mr. Innelli and that's all and then --

25 MR. INNELLI: Yes, Your Honor.

1 THE COURT: Okay, good. All right, I think we've
2 got it all straight and so I will -- I'm concerned about my
3 charge, I will charge on the Pennsylvania Minimum Wage Act,
4 okay? All right, you'd better hang around because we get --
5 when we get to having to -- because you got copies, didn't
6 you, of my proposal, my proposed --

7 MR. WELLS: Of the jury charge?

8 THE COURT: Yes.

9 MR. WELLS: We did, Your Honor.

10 MR. INNELLI: Yes, --

11 THE COURT: All right.

12 MR. INNELLI: -- we did.

13 THE COURT: Okay. And so during the trial I'm going
14 to -- I'm going to have a charging conference.

15 MR. WELLS: Very good. Your Honor, would it be
16 beneficial for the parties to meet and confer and propose
17 changes to your -- to your jury charge with the rest of the
18 issues that we resolved through settlement?

19 THE COURT: Well, that would be wonderful if you're
20 willing to do it. That would be great. Could you do it, Mr.
21 Innelli?

22 MR. INNELLI: Yes, we can do that.

23 THE COURT: Okay. I mean, because I know you're
24 preparing for trial and I understand that. Okay. All right.
25 You'll try and we'll try and then we'll see what happens,

1 okay?

2 MR. INNELLI: Yes, Your Honor. Thank you.

3 MR. WELLS: And, Your Honor, one last question from
4 plaintiff. With respect to exhibit issues at trial, two
5 courtesy copies are being provided to the Court prior to
6 trial, is that correct?

7 THE COURT: That's correct.

8 MR. WELLS: Very good. Thank you --

9 THE COURT: You know, the only thing --

10 MR. WELLS: -- Your Honor.

11 THE COURT: -- the only thing as I understand it is
12 going to be that chart. Is there anything else?

13 MR. WELLS: Your Honor, it will be the house rules
14 and one other exhibit from plaintiff. It would be a total of
15 approximately 15 pages or so. We are preparing them now and
16 we will be providing them to the Court before Monday.

17 THE COURT: Okay. And how about you, Mr. Innelli?
18 What do you think you're going to be presenting?

19 MR. INNELLI: There will be a number of printouts
20 that have been introduced in the case during discovery through
21 depositions and submissions of various motions -- motions for
22 summary judgment and all that were filed, so the documents are
23 ones which are known to the parties.

24 We'll be making copies of those and using those in
25 examination of the expert witness that the plaintiffs have and

1 in demonstrating what we believe the damages are -- our
2 calculation of damages.

3 THE COURT: And have you given that to -- have you
4 given that to plaintiff's counsel?

5 MR. INNELLI: I believe he already has it in the
6 productions that have taken place -- have taken place in the
7 past. It's easy enough for us to make another copy for --

8 THE COURT: Yes, why don't you --

9 MR. INNELLI: -- him if they need --

10 THE COURT: -- why don't you send them to him, okay,
11 so we all know what.

12 MR. INNELLI: I will.

13 THE COURT: And you and he -- you have his expert's
14 report, you know, expert's report and the --

15 MR. INNELLI: I do.

16 THE COURT: Okay. Okay, I think that it all sounds
17 right and I -- that would be lovely if you could agree on the
18 -- on the proposed charge, okay?

19 MR. WELLS: Very good. Thank you, Your Honor.

20 MR. INNELLI: Thank you, Your Honor.

21 (Matter concluded, 3:11 p.m.)

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C E R T I F I C A T I O N

I, Diane Gallagher, court approved
transcribers, certify that the foregoing is a correct
transcript from the official electronic sound recording of the
proceedings in the above-entitled matter.

_____	_____
DIANE GALLAGHER	DATE
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